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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE ADOPTION OF H.H.

TERRY HAMRICK,

Appellant,

vs.

BRADLEY WRIGHT,

Appellee.

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No. 82A01-0704-JV-185

APPEAL FROM THE VANDERBURGH SUPERIOR COURT

The Honorable Renée A. Cain, Magistrate

Cause No. 82D07-0605-AD-65

November 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Terry Hamrick (“Father”) appeals the trial court’s denial of his motion to correct error following its determination that his consent was unnecessary to the adoption of his daughter, H.H., by Bradley Wright (“Wright”). We affirm.

Issue

Did Father preserve any claim of error regarding the trial court’s exclusion of testimony from Father and his parents?

Facts and Procedural History

On July 21, 1998, H.H. was born in wedlock to Father and Kelly Wright (“Mother”). The marriage was dissolved on July 8, 1999, and Mother was given primary physical custody of H.H. Father was ordered to pay support and was granted visitation pursuant to a schedule approved by the trial court. On March 24, 2000, the trial court granted visitation to Father’s father. On July 29, 2002, the trial court ordered that Father’s parenting time be “limited and closely supervised, until further order of the court.” Appellant’s App. at 34.

On July 16, 2005, Mother married Wright. On May 26, 2006, Wright filed a petition to adopt H.H. The petition alleged that Father’s consent to the adoption was unnecessary because he had “abandoned and deserted” H.H. and had failed for more than one year “without justifiable cause to communicate significantly with [H.H.] when able to do so and [had] failed to provide for any care or support” for H.H. *Id.* at 20. On July 7, 2006, Father filed an objection to adoption and withholding of consent. On December 6 and 13, 2006, the trial court held an evidentiary hearing. The trial court granted the adoption, finding that Father’s consent was unnecessary because he had abandoned H.H. Father filed a motion to

correct error, which the trial court denied after hearing arguments of counsel. This appeal ensued.

Discussion and Decision

Indiana Code Section 31-19-9-8(a) provides that consent to adoption is not required from “[a] parent or parents if the child is adjudged to have been abandoned or deserted for at least six (6) months immediately preceding the date of the filing of the petition for adoption.”

Father asserts that the trial court erred in excluding testimony from Father and his parents that he claims “could establish the Mother’s unwillingness to permit the Father to exercise parenting time or otherwise have any contact with [H.H.] and which included evidence regarding contact which could establish the Mother’s efforts to hamper or thwart communication between the Father” and H.H. Appellant’s Br. at 4.

We conclude that Father has waived any claim of error. Indiana Evidence Rule 103(a) provides,

Error may not be predicated upon a ruling which admits or excludes evidence, unless a substantial right of the party is affected, and ... [i]n case the ruling is one excluding evidence, the substance of the evidence was made known to the court by a proper offer of proof, or was apparent from the context within which the questions were asked.

Here, Father has failed to provide us with a transcript of the evidentiary hearing on the adoption petition. As such, there is no indication that he made a proper offer of proof or that the substance of the excluded evidence “was apparent from the context within which the questions were asked.” Ind. Evidence Rule 103(a). To the extent that Father relies on the arguments made during the hearing on his motion to correct error, “[i]t is axiomatic that the

arguments of counsel are not evidence.” *Fulk v. Allied Signal, Inc.*, 755 N.E.2d 1198, 1203 n.4 (Ind. Ct. App. 2001).

More generally, we note that

[e]rror, to be properly reviewed, must be disclosed by the record. If the evidence in the record before the court is not sufficient to disclose that the appellant was prejudiced, then this court cannot assume such prejudice. The appellant has an affirmative duty to bring a proper record to the court and we cannot consider matters not contained in the record.

Shigley v. Whitlock, 160 Ind. App. 78, 81-82, 310 N.E.2d 93, 95 (1974) (citations omitted).

Father has failed to present us with any evidence whatsoever. Consequently, we affirm the trial court in all respects.

Affirmed.

BAILEY, J., and NAJAM, J., concur.